

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 7021 (CS/CS/CS/SB 1254)	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	State Affairs Committee; Agriculture & Natural Resources Appropriations Subcommittee; Agriculture & Natural Resources Subcommittee; Crisafulli and others (Budget Subcommittee on General Government Appropriations; Environmental Preservation and Conservation Committee; Agriculture Committee; and Siplin)	115 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/SB 1254	<b>GOVERNOR'S ACTION:</b>	Approved

---

**SUMMARY ANALYSIS**

CS/CS/HB 7021 passed the House on February 15, 2012, and subsequently passed the Senate on March 9, 2012. The bill addresses various issues relating to the Department of Agriculture and Consumer Services (department). The bill:

- Designates the department as the staff responsible for acquiring and administering conservation easements on state lands.
- Allows water hyacinths produced by certified aquaculture producers to be exported to domestic, as well as foreign, markets.
- Clarifies that the department has sole responsibility for enforcing laws, regulations, rules or policies relating to broadcast burning or agricultural or silvicultural pile burning.
- Specifies that members of committees, boards, councils, working groups, task forces or any other advisory bodies created within the department or by the department are not entitled to per diem or travel expenses.
- Extends the due date from September 15 to September 30 for mosquito control districts to provide their certified budgets to the department.
- Authorizes the department to adopt by reference the current revision of the federal model food code when applicable.
- Extends the expiration dates for the fertilizer tonnage fee program to December 31, 2022 and December 31, 2027.
- Repeals language establishing the Plant Industry Technical Council, the Aquaculture Interagency Coordinating Council and the Florida Agricultural Exposition.
- Repeals the Fertilizer Technical Council, the Commercial Feed Technical Council and the Seed Technical Council and creates the Agricultural Feed, Seed and Fertilizer Advisory Council.
- Requires companies distributing feed in the state to report the number of tons distributed to the department on a quarterly basis, specifies penalties for failure to comply, and specifies that consumers who purchase commercial feed that is in violation of department standards may seek legal or administrative action to recover penalties. If the identity of the consumer cannot be ascertained, the registrant of the commercial feed must reimburse the department.
- Allows soil and water conservation districts to work within the district's boundaries, territories within another district's boundaries subject to the other district's approval, or territories not contained within any district's boundaries to maximize the utilization of water conservation devices, systems, and techniques; reduces the membership of the Soil and Water Conservation Council from 23 members to 7 members; and directs that the proceeds of the sale of soil and water conservation district property be credited to the district rather than the department.
- Provides that, upon dissolution of a Soil and Water Conservation District, the district's assets and liabilities are transferred to the local general purpose government.
- Waives the annual registration fee for elementary, middle, high school or vocational schools that participate in the aquaculture certification program.
- Authorizes the Commissioner of Agriculture to act as trustee on bonds posted with the United States Department of Agriculture in compliance with the Packers and Stockyards Act.

The fiscal impact on the state and local government is expected to be insignificant. See Fiscal Analysis section.

The bill was approved by the Governor on April 27, 2012, ch. 2012-190, Laws of Florida. The effective date of the bill is July 1, 2012.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h7021z1.ANRS.DOCX

**DATE:** April 30, 2012

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Division of Food, Nutrition and Wellness**

##### Present Situation

Chapter 2011-207, L.O.F., transferred the administration of the school food and nutrition programs from the Department of Education to the Department of Agriculture and Consumer Services (department) pending a waiver from the United States Department of Agriculture (USDA). The transfer included all powers, duties, functions, records, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the administration of the school food and nutrition programs. The waiver was granted in October 2011; therefore, effective January 1, 2012, the department will administer the school food and nutrition programs in the state.

Section 570.29, F.S., lists the various divisions within the department. This section of statute is duplicative of s. 20.14, F.S., which establishes the department in the organizational structure of the state.

##### Effect of Proposed Changes

The bill amends s. 20.14, F.S., to establish the Division of Food, Nutrition and Wellness within the department. This new division will house the school food and nutrition programs that were transferred to the department during the previous legislation session.

The bill repeals s. 570.29, F.S., and corrects various cross-references from s. 570.29, F.S., to s. 20.14, F.S.

#### **Florida Forest Service**

##### Present Situation

##### *State Lands*

Section 253.002, F.S., directs the Department of Environmental Protection (DEP) to perform all staff duties and functions related to the acquisition, administration, and disposition of state lands, which are titled and vested in the Board of Trustees of the Internal Improvement Trust Fund (BOT). However, water management districts perform the staff duties and functions related to the review of applications for authorization to use BOT-owned submerged lands necessary for an activity related to the management and storage of surface waters for which the water management district has permitting responsibility. Additionally, the department performs the staff duties and functions related to the review of applications and compliance with conditions for use of BOT-owned submerged lands under authorizations or leases issued relating to aquaculture activities.

In 2001, the Legislature passed the Rural and Family Lands Protection Program (act),<sup>1</sup> which focuses on maintaining the integrity and function of working agricultural landscapes through the acquisition of development rights using permanent easements from qualified and willing agricultural land owners. Landowners protecting their land under this program are free to undertake any agricultural practice as long as they are willing to follow established Best Management Practices.

---

<sup>1</sup> Chapter 2001-279, L.O.F.

Section 570.71, F.S., specifies that the department, acting on behalf of the BOT, may allocate moneys to acquire perpetual, less-than-fee interest in land, to enter into agricultural protection agreements, and to enter into resource conservation agreements. Rural-lands-protection easements are a perpetual right or interest in agricultural land that is suitable for retaining such land in predominantly its current state and to prevent the subdivision and conversion of such land into other uses. Lands placed in a protection or conservation easement may not be used for:

- Construction or placement of buildings, roads, billboards or other advertising, utilities, or structures, except those structures and unpaved roads that are necessary for agricultural operations on the land or structures necessary for other activities allowed under the easement, and except for linear facilities, such as electric transmission and distribution facilities, telecommunications transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances;
- Subdivision of the property;
- Dumping or placing of trash, waste, or offensive materials; and
- Activities that affect the natural hydrology of the land or that detrimentally affect water conservation, erosion control, soil conservation, or fish or wildlife habitat, except those required for environmental restoration; federal, state, or local government regulatory programs; or best management practices.

Resource conservation agreements are contracts for services that provide annual payments to landowners for services that actively improve habitat and water restoration or conservation on their lands over and above that which is already required by law or that provide recreational opportunities. The agreements are for a term of not less than 5 years and not more than 10 years. Property owners are eligible to enter into resource conservation agreements only upon entering into a conservation easement or rural lands protection easement.

Agricultural protection agreements are for a term of 30 years and provide payments to the landowner having significant natural areas on their land. Public access and public recreational opportunities may be negotiated at the request of the landowner. As stated above, certain prohibitions apply.

As part of the agricultural protection agreement, the parties must agree that the state has the right to buy a conservation easement or rural land protection easement at the end of the 30-year term. If the landowner offers the easement for purchase and the state does not respond in a timely fashion, the landowner is released from the agricultural agreement. The purchase price of the easement must be established in the agreement and is based on the value of the easement at the time the agreement is entered into, plus a reasonable escalator multiplied by the number of full calendar years following the date of the commencement of the agreement. The landowner may transfer or sell the property before the expiration of the 30-year term, but only if the property is sold subject to the agreement and the buyer becomes the successor in interest to the agricultural protection agreement. Upon mutual consent of the parties, a landowner may enter into a perpetual easement at any time during the term of an agricultural protection agreement.

Payments for conservation easement are lump-sum payments at the time the easement is entered into. Landowners entering into an agricultural protection agreement may receive up to 50 percent of the purchase price at the time the agreement is entered into, with the remaining payments on the balance being paid in equal annual sums over the term of the agreement. Payments for resource conservation agreements are equal annual payments over the term of the agreement. Easements purchased in accordance with the act cannot prevent landowners from transferring the remaining fee value with the easement.

The department, in consultation with the DEP, the water management districts, the Department of Economic Opportunity, and the Florida Fish and Wildlife Conservation Commission, can adopt rules to establish an application process, a process and criteria for establishing funding priorities, an appraisal process, and a process for title review and compliance and approval of the rules by the BOT.

A landowner may choose not to have his property included in any lists or maps developed to implement this act by providing a written request to the department asking to be left off of the list or map.

The department may use funds from the state, the federal government, other governmental entities, non-governmental organizations, or private individuals to implement this act. Any funds provided must be deposited into the Conservation and Recreation Lands Program Trust Fund within the department and used for the purpose of this act. No more than 10 percent of any funds made available to implement this act may be expended for resource conservation agreements and agriculture protection agreements.

The department has entered into a memorandum of understanding (MOU) with the DEP allowing the department to carry out the responsibilities of acquiring conservation easements. In accordance with the MOU, the department negotiates contracts, performs all due diligence with regard to the real estate transactions, prepares the BOT agenda item and presents the item at the BOT meetings. However, according to Florida law, all information must be submitted to the DEP for review prior to the BOT meeting as well as prior to closing.

### *Creation of Certain State Forests*

Chapter 2011-116, L.O.F., directed the Florida Forest Service (FFS) to designate areas of state forests as "Wounded Warrior Special Hunt Areas" to honor wounded veterans and service members, and provide outdoor recreational opportunities for eligible veterans and service members. Admittance to these areas are limited to persons who are an active duty member of any branch of the United State Armed Forces and has a combat-related injury or a veteran who served during a period of wartime service or peacetime service and has a service-connected disability or was discharged from military service because of a disability acquired or aggravated while serving on active duty.

### *Tree Planting Programs*

Section 589.277, F.S., authorizes the FFS to administer federal, state and privately sponsored tree-planting programs to assist private rural landowners and urban communities. Contributions from governmental and private sources may be deposited into the Federal Grants Trust Fund. The FFS has the authority to develop and implement guidelines and procedures to utilize the financial resources of the fund for urban and rural reforestation. Grants to municipalities, counties, nonprofit organizations, and qualifying private landowners may be made from allocated moneys for the purpose of purchasing, planting, and maintaining native tree species. The FFS must work with the Department of Education to develop programs to teach the importance of trees in the urban, rural and global environment.

While current statutory language states that both governmental and private contributions may be deposited into the Federal Grants Trust Fund, the federal government does not allow private funds to be deposited into this trust fund. Therefore, the FFS can't accept funds from a non-federal source.

Chapter 2011-206, L.O.F., renamed the Division of Forestry, within the department, to the Florida Forest Service as it was first designated in the early 1900s. While many references in the statutes have been changed to the Florida Forest Service, some references to the Division of Forestry remain.

### *Forest Protection*

Section 590.02 (10)(a), F.S., specifies that the FFS has exclusive authority to require and issue authorizations for broadcast burning and agricultural and silvicultural pile burning. An agency, commission, department, county, municipality, or other political subdivision of the state cannot adopt laws, regulations, rules, or policies pertaining to broadcast burning or agricultural and silvicultural pile burning unless an emergency order is declared in accordance with s. 252.38(3), F.S., as it relates to

emergency management powers of political subdivisions. However, nothing in this section prohibited these entities from enforcing laws, regulations, rules, or policies that may have already been adopted.

### Effect of Proposed Changes

#### *State Lands*

The bill amends s. 253.002, F.S., to empower the department to perform the staff duties and functions relating to the acquisition, administration, and disposition of conservation easements pursuant to s. 570.71, F.S., on BOT-owned lands.

#### *Creation of Certain State Forests*

Since the enactment of chapter 2011-116, L.O.F., it has come to the attention of the department that another organization is using the term "Wounded Warrior." The bill amends s. 589.19(4)(a), F.S., to rename the "Wounded Warrior Special Hunt Area" as the "Operation Outdoor Freedom Special Hunt Area."

#### *Tree Planting Programs*

The bill amends s. 589.277, F.S., to allow the deposit of funds for tree-planting programs into either the Federal Grants Trust Fund or the Incidental Trust Fund so the department can accept non-federal funds and have a place to deposit those funds. The bill also changes references from the Division of Forestry to the Florida Forest Service.

#### *Forest Protection*

The bill amends s. 590.02 (10)(a), F.S., to further state that, in addition to the prohibition on adopting laws, regulations, rules, or policies pertaining to broadcast burning or agricultural and silvicultural pile burning, an agency, commission, department, county, municipality, or other political subdivision of the state cannot enforce such laws, regulations, rules, or policies that may have already been adopted.

### **Advisory Committees**

#### Present Situation

Chapter 2011-206, L.O.F., repealed statutory authority allowing members of advisory committees under the jurisdiction of the department to receive travel expenses and per diem. While a majority of the advisory committees and councils were identified in ch. 2011-206, L.O.F., some committees and councils were overlooked.

Section 589.03, F.S., specifies that members of the Florida Forestry Council are not entitled to compensation for the services they render to the council. However, members of the council are entitled to travel and per diem for attending meetings and performing the duties required by membership on the council. Current law specifies that the aggregate expense of all members of the council cannot exceed \$2,500 during any fiscal year.

Additionally, some advisory committees that do not fall under the purview of the department were stripped of the ability to receive travel expenses and per diem.

### Effect of Proposed Changes

The bill repeals the statutory authority allowing members of the Sturgeon Production Working Group and the Private Investigation, Recovery and Security Advisory Council to receive travel expenses and per diem.

Additionally, the bill repeals s. 589.03, F.S., relating to compensation and allowance for members of the Florida Forestry Council. Since the department no longer reimburses members of the council for travel and per diem, this section of statute is no longer valid.

The bill also clarifies in s. 570.0705, F.S., that members of committees, boards, councils, working groups, task forces, or any other advisory bodies created within the department or by the department are not entitled to per diem or travel reimbursements.

The bill restores the authority for members of the Citrus Research and Development Foundation, Inc. and the Florida State Fair Authority to receive travel expenses and per diem. These expenses are reimbursed by the foundation and fair authority, respectively.<sup>2</sup>

## **Mosquito Control**

### Present Situation

#### *Powers and Duties*

Section 388.161, F.S., prescribes the powers and duties of the board of commissioners for mosquito control districts. The board may do any and all things necessary to control and eliminate all species of mosquitoes and other arthropods of public health importance, including providing for the construction and maintenance of canals, ditches, drains, dikes, fills, and other necessary works. The board may also provide for the installation and maintenance of pumps, excavators, and other machinery and equipment, the use of oil, larvicide paris green, or any other chemicals approved by the department but only in such quantities as may be necessary to control mosquito breeding and will not be detrimental to fish life. The board also has all of the powers of a body corporate, including the power to sue and be sued as a corporation in any court; to contract; to adopt and use a common seal and alter the seal as needed; to purchase, hold, lease, and convey real estate and personal property as the board sees fit to carry out the purposes of chapter 388, F.S.; to acquire by gift real estate, personal property, and moneys; and to employ a field director and such trained personnel, legal, clerical or otherwise, and laborers as may be required. The board has the authority to adopt rules as necessary to carry out the purposes of chapter 388, F.S., provided such rules are approved by the department.

#### *District Budgets*

Section 388.201, F.S., specifies that the fiscal year for mosquito control districts operating under the provisions of chapter 388, F.S., is the 12-month period extending from October 1 of one year through September 30 of the following year. Prior to July 15 of each year, the governing board must complete the preparation of a tentative detailed work plan budget. The tentative budget must include proposed operations and requirements for arthropod control measures during the ensuing fiscal year. For the purpose of determining eligibility for state aid, the governing board must submit copies to the department for review and approval. The tentative budget must set forth, classified by account number, title and program items, and by fund from which to be paid, the proposed expenditures of the district for construction, acquisition of land, and other purposes, for the operation and maintenance of the district's works, the conduct of the district generally, to which may be added an amount to held as a reserve.

The tentative budget must also show the estimated amount that will appear at the beginning of the fiscal year as obligated upon commitments made but uncompleted. The estimated unobligated or net balance that will be on hand at the beginning of the fiscal year and the estimated amount to be raised by district taxes and from any and all other sources for meeting the district's requirements must also be included in the tentative budget.

---

<sup>2</sup> Sections 573.112 and 616.252, F.S.

The budget and maintenance tax levy must be adopted in accordance with the method in which the millage is assessed. The board may consider objections filed to the tentative budget and, in its discretion, amend, modify, or change the tentative budget. The board must adopt and execute a certified budget for the district by September 15 of each year. The certified budget must be on a form furnished by the department. Certified copies of the budget shall be submitted to the department for approval by September 15 of each year.

The county commissioners' mosquito and arthropod control budgets shall be made and adopted as prescribed by s. 388.201, F.S., and summary figures shall be incorporated into the county budgets as prescribed by the Department of Financial Services.

#### *Disposal of Surplus Property*

Section 388.323, F.S., directs that serviceable equipment no longer needed by a county or mosquito control district must first be offered to any or all other counties or districts engaged in arthropod control at a price established by the board of commissioners who own the equipment. If no acceptable offer is received within a reasonable time, the equipment shall be offered to other governmental units or private nonprofit agencies.<sup>3</sup> The alternative procedure for disposal of surplus property is followed if it has been determined no other county, district, governmental unit, or private nonprofit agency has need for the equipment. All proceeds from the sale of any real or tangible personal property owned by the county or district shall be deposited into the county's or district's state fund account unless otherwise specifically designated by the department.

#### *John A. Mulrennan, Sr. Arthropod Research Laboratory*

The John A. Mulrennan, Sr. Arthropod Research Laboratory (lab) is a research laboratory under the administration of the Florida Agricultural and Mechanical University (FAMU). The lab performs basic and applied research to develop and test formulations, application techniques, and procedures of pesticides and biological control agents for the control of arthropods and, in particular, biting arthropods of public health or nuisance importance. The lab gives special attention to the needs of arthropod control districts, counties, and municipalities of the state by providing information, assistance and recommendations for the safe and effective control of arthropods which create a health or nuisance problem. The lab performs environmental impact studies to determine the effects of arthropod control pesticides, with a special emphasis on integrated arthropod control. Each quarter, the lab provides the department with such information as the department may need to assist it in the performance of its duties with respect to arthropod control under chapter 388, F.S. The lab also serves as a center for training of students and state and local government personnel in the safe and effective control of biting arthropods that create a public health or nuisance problem. Funds that become available from the federal government, from any district or county, from funds appropriated to local arthropod control agencies by the state, or from any other sources may be used in constructing, equipping, and operating the lab.

#### *Florida Coordinating Council on Mosquito Control*

Section 388.46, F.S., establishes the Florida Coordinating Council on Mosquito Control. The council is represented by designees of:

- The Secretary of Environmental Protection and the State Surgeon General;
- The executive director of the Fish and Wildlife Conservation Commission;

---

<sup>3</sup> A private non-profit agency is defined in s. 273.01(3), F.S., as a nonprofit charitable organization, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, which has been held to be tax-exempt under the provisions of s. 501 of the Internal Revenue Code of 1954, and which has as its principal mission public health and welfare; education; environmental restoration and conservation; civil and human rights; or the relief of human suffering and poverty.

- The state epidemiologist;
- The Commissioner of Agriculture; and
- Representatives from the University of Florida, Institute of Food and Agricultural Sciences, Florida Medical Entomological Research Laboratory; FAMU; the United States Environmental Protection Agency; the United States Department of Agriculture, Insects Affecting Man Laboratory; the United States Fish and Wildlife Service; two mosquito control directors nominated by the Florida Mosquito Control Association; two representatives of Florida environmental groups; and two private citizens who are property owners whose lands are regularly subject to mosquito control operations, appointed for 4-year terms by the Commissioner of Agriculture; and the Board of Trustees of the Internal Improvement Trust Fund.

The council is chaired by the Commissioner of Agriculture or his authorized designee. A majority of the membership constitutes a quorum for conducting business. The chair is responsible for recording and distributing to the members a summary of the proceedings of all council meetings. The council must meet at least three times a year, or as needed. The council may designate subcommittees, as needed, to assist in carrying out its responsibilities. The Subcommittee on Managed Marshes must be the first subcommittee appointed by the council. The subcommittee must provide technical assistance and guidance on mosquito impoundment management plans and develop and review research proposals for mosquito source reduction techniques.

The responsibilities of the council include:

- Developing and implementing guidelines to assist the department in resolving disputes arising over the control of arthropods on publicly owned lands.
- Identifying and recommending to FAMU research priorities for arthropod control practices and technology.
- Developing and recommending to the department a request for a proposal process for arthropod control research.
- Identifying potential funding sources for research or implementation projects and evaluating and prioritizing proposals upon request by the funding source.
- Preparing and presenting reports, as needed, on arthropod control activities in the state to the Pesticide Review Council, the Florida Coastal Management Program Interagency Management Committee, and other governmental organizations, as appropriate.

### Effect of Proposed Changes

#### *Powers and Duties*

The bill amends s. 388.161, F.S., to specify that the board is authorized to use pesticides registered by the department to control mosquito breeding, as long as it is not detrimental to fish life. The terms previously used in statute that are being deleted are obsolete.

#### *District Budgets*

The bill amends s. 388.201., F.S., to change the date the certified budget is due to the department from September 15 to September 30 of each year. This change will reduce burdens on local governments by providing additional time for budget preparation.

#### *Disposal of Surplus Property*

The bill amends s. 388.323, F.S., to only require that mosquito control districts first offer surplus equipment to other counties or districts engaged in arthropod control, and deletes the requirement that mosquito control districts also offer such equipment to other governmental units or private nonprofit

agencies. Generally, mosquito control equipment is highly specialized and only of use to other mosquito control programs.

*John A. Mulrennan, Sr. Arthropod Research Laboratory*

The bill repeals s. 388.42, F.S., relating to the John A. Mulrennan, Sr. Arthropod Research Laboratory. In June 2011, FAMU closed the laboratory, terminated all of its employees, and disposed of all of its assets.

*Florida Coordinating Council on Mosquito Control*

The bill amends s. 388.46(2)(a), F.S., to remove FAMU from the Florida Coordinating Council on Mosquito Control. With the closing of the laboratory, there is no need for continued representation on the council.

The bill amends s. 388.46(2)(b), F.S., to more accurately reflect the work of the Subcommittee on Managed Marshes by specifying that the subcommittee take into account the mosquito control source reduction implications and natural resource interests when providing technical assistance and guidance on saltmarsh management plans and research proposals.

The bill also removes a reference to the Florida Coastal Management Program Interagency Management Committee. This committee is no longer in existence.

## **Food Safety**

### Present Situation

#### *Rulemaking*

The Division of Food Safety (DFS) is responsible for assuring the public of a safe, wholesome and properly represented food supply through permitting and inspection of food establishments, inspection of food products, and performance of specialized laboratory analyses on a variety of food products sold or produced in the state. The DFS monitors food from farm gate through processing and distribution to the retail point of purchase. Section 500.09(3), F.S., requires the DFS to adopt the rules necessary to enforce the provisions of chapter 500, F.S.,<sup>4</sup> and specifies that the department is authorized to adopt by reference the rules adopted by the Food and Drug Administration (FDA) in regard to food safety.

#### *Pilot Program*

During the 1997 legislative session, the DFS initiated a pilot program for the inspection of food establishments and vehicles. The program was used as a “carrot” to reward food establishments that routinely passed the inspection process performed by the DFS. To participate in the pilot program a food establishment must meet the following criteria:

- Maintain a good inspection history over a specified period of time.
- Maintain certified food manager activities that demonstrate effective assessment of food safety practices and correcting deficiencies at the food establishment.
- Maintain an active food training program for employees.
- Maintain “self inspection” records that are available for inspection by the DFS.
- Maintain written sanitation standard operation procedures and verification records for review by the DFS.
- Maintain logs for the freezer/refrigeration units and hot-cold temperature charts for review by the DFS.

---

<sup>4</sup> Chapter 500, F.S., deals with food products.

- Maintain records of corrective actions to resolve food safety deficiencies for review by the DFS.

When first implemented, approximately 17 food establishments participated in the pilot program. Because of the difficulty of compliance, however, no participation has been recorded since 2004.

### *Milkfat Testing*

Section 502.014(3), F.S., requires the department to maintain a program to issue permits to persons who test milk or milk products for fat content if these tests are used as a basis for payment to the dairy farmer.

To obtain a permit, an applicant must pay a fee of \$125<sup>5</sup> and demonstrate sufficient knowledge, ability, and equipment to perform milkfat testing satisfactorily. Each permit holder must maintain records of all tests conducted for a period of 1 year and make such records available to the department for review. Since this program was implemented in 1973, the industry has evolved and the USDA Milk Marketing Administration provides the same function.

### Effect of Proposed Changes

#### *Rulemaking*

The bill amends s. 500.09(3), F.S., to specify that the DFS is authorized to adopt by reference the current edition of the model food code issued by the FDA and Public Health Service of the United States Department of Health and Human Services. While the DFS must still follow the established rulemaking process, this change enables the DFS to adopt the current edition of the model food code.

#### *Pilot Program*

The bill repeals s. 500.147(6), F.S., relating to the pilot program for the inspection of food establishments. In lieu of the pilot program, the DFS has implemented a variable inspection program, which rewards food establishments with good sanitary history by reducing the frequency of inspections.

#### *Milkfat Testing*

The bill amends ss. 502.014 and 502.053, F.S., to delete the duplicative permitting requirement for milkfat testers.

### **Water Issues**

#### Present Situation

##### *Office of Agricultural Water Policy*

During the 2011 legislative session, the Office of Water Policy Coordination was renamed as the Office of Energy and Water. This was done to better reflect the duties carried out by this office. However, at the same time, the Legislature transferred the state energy office to the department. This expanded the focus of energy beyond what was planned for within this office. With the transfer of the state energy office, a new office (Office of Energy) was created within the department.

##### *Fertilizer Tonnage Fee*

Section 576.045, F.S., specifies legislative intent regarding the improvement of fertilization-management practices that protect that state's water resources and preserves a viable agricultural

---

<sup>5</sup> This amount covers a two year period.

industry, which may be accomplished through research concerning best management practices and education and incentives for the agricultural industry and other major users of fertilizer.

In addition to the fees paid for registration and inspection of agricultural fertilizers, a tonnage fee of 50 cents per ton is assessed for all fertilizer sold in the state that contains nitrogen or phosphorous. These fees are deposited into the General Inspection Trust Fund, and are appropriated annually to the department and allocated according to a memorandum of understanding between the department and the Department of Environmental Protection (DEP). These funds must be used for the express purpose of research, development, adoption, and distribution of interim measures, best management practices (BMPs), or other measures that achieve state water quality standards for nitrogen and phosphorous criteria. The funds may be used for cost-sharing grants, technical assistance, implementation tracking, and conservation leases or other agreements for water quality improvement. The funds may also be used to reimburse the DEP for costs incurred while monitoring and verifying the effectiveness of the interim measures, BMPs, or other measures, as well as sampling and analyzing potable water supplies found to contain levels of nitrate in excess of state water quality standards.

To achieve these goals, the department may consult with the DEP, the Department of Health, the water management districts, environmental groups, the fertilizer industry, and representatives from the affected farming groups.

The provisions regarding funding and intent, fees, purpose, waiver of liability, and rulemaking are set to expire on December 31, 2012. Compliance and other provisions are set to expire on December 31, 2017. Failing to extend these expiration dates would create a shortfall of approximately \$1 million annually, which the department uses in the development and implementation of agricultural BMPs.

### Effect of Proposed Changes

#### *Office of Agricultural Water Policy*

The bill changes the name of the Office of Energy and Water to the Office of Agricultural Water Policy.

#### *Fertilizer Tonnage Fee*

The bill amends section 576.045, F.S., to extend the expiration dates for the fertilizer tonnage fee program to December 31, 2022 and December 31, 2027, respectively.

## **Plant Industry**

### Present Situation

#### *Plant Industry Technical Council*

Section 570.34, F.S., establishes the Plant Industry Technical Council (PITC) to address plant industry-related issues. The PITC is composed of eleven members representing various industry-related interests, as well as a citizen-at-large representative, all who serve on the State Agricultural Advisory Council. An additional representative from the citrus fruit industry, appointed by the Commissioner of Agriculture, also serves on the PITC.

The Division of Plant Industry (DPI) reports that the PITC has met sporadically over the past several years and has not been an effective mechanism to address plant industry-related issues. In the recent past, the DPI has had better success in dealing with issues by using working groups or task forces that are commodity based or specific to a given issue. Additionally, the DPI has partnered with their respective counterparts at the USDA to establish the Florida Partnership Council. The council meets with industry stakeholders to seek input and review overall plant protection programs in Florida.

## *Aquatic Plant Nursery Registration*

Section 581.145, F.S., directs that, despite any other provision of state or federal law, the department issue, when requested, a permit to an aquaculture producer to engage in the business of exporting water hyacinths to countries other than the United States and only when such hyacinths are cultivated in a nursery for the sole purpose of exportation and the aquaculture activity has been certified by the department. An aquaculture producer is forbidden from shipping water hyacinths to another country under the permit for the purpose of importing the hyacinths back into the United States. Drop shipments cannot be made to any destination within the United States. This provision does not restrict or interfere with the Department of Environmental Protection's efforts, or those of any other agency or local government responsible for the management of noxious aquatic plants, to control or eradicate noxious non-nursery aquatic plants, including water hyacinths. This provision is not a consideration in the approval or the release of biological control agents for water hyacinths or any other noxious aquatic plants.

Even though the water hyacinth is not on the United States Department of Agriculture's Noxious Plant List, Florida aquatic plant producers have been prohibited from distributing these products through interstate commerce. This puts Florida aquatic plant producers at a competitive disadvantage in the United States marketplace.

### Effect of Proposed Changes

#### *Plant Industry Technical Council*

The bill repeals section 570.34, F.S., which establishes the Plant Industry Technical Council. The bill also deletes the term "technical council," which refers to the PITC, from the definitions section in Chapter 581, F.S.

#### *Aquatic Plant Nursery Registration*

The bill amends s. 581.145, F.S., to allow for the transporting and selling of water hyacinths to other states and countries that allow such transportation and sale when the aquaculture activities have been certified by the department. An aquaculture producer may not ship water hyacinths to other states or countries under the permit for the purpose of importing the hyacinths back into Florida. Section 581.145(3), F.S., does not restrict or interfere with the efforts of the Fish and Wildlife Conservation Commission or the efforts of any other agency or local government responsible for the management of noxious aquatic plants, to control or eradicate noxious non-nursery aquatic plants, including water hyacinths.

## **Agriculture Environmental Services**

### Present Situation

#### *Agricultural Feed, Seed and Fertilizer Advisory Council*

Currently, within the department there are three separate advisory councils that mitigate issues regarding fertilizer, seeds, and commercial feed: the Fertilizer Technical Council, the Commercial Feed Technical Council, and the Seed Technical Council. Each of these councils is composed of between 11 and 13 members, which include representatives of the various industry groups related to the respective councils, as well as representatives of the department and the Institute of Food and Agricultural Sciences at the University of Florida (IFAS). While each council addresses issues unique to its particular area, overlap occurs because of the nature of the three topics. All of the various industry groups have agreed to combine the three separate councils into one all-encompassing council.

## *Commercial Feed Master Registration*

Section 580.041, F.S., requires distributors of commercial feed in the state to obtain a master registration each year before distributing their brand. Distributors must consent to complying with provisions of chapter 580, F.S., as well applicable rules. Registration forms must be accompanied by a fee based on tons of feed distributed in the state during the previous year.<sup>6</sup>

The terms of compliance for registration include:

- Submitting samples of manufactured feed for testing by laboratories certified by the department or obtaining an exemption from testing, as provided by chapter 580, F.S.
- Maintaining a bookkeeping systems and records that allow the department to verify the accuracy of the reported tonnage of feed distributed in the state.
- Allowing the department to examine pertinent records.

The department has statutory authority to assess penalties for violations of chapter 580, F.S., as well as to refuse, suspend, or cancel the master registration of a distributor who violates or fails to comply with the provisions of chapter 580, F.S.

Records of the tonnage of feed distributed are maintained by the distributor and verified by the department. Some registrants defer or refuse to provide accurate information. Because the registration cost is based on the tons of feed distributed in the state, the failure to report the tonnage presents a problem when assessing the registration fee.

Additionally, current law requires registrants to have feed samples and ingredients testing at a frequency determined by department rule.<sup>7</sup> The rule states that testing is based on the quantity and type of feed distributed. Without proper reporting, it is impossible for the department to determine if registrants are in compliance with statutory and rule testing requirements.

## *Commercial Feed Penalties Payable to Consumers*

Section 580.131, F.S., provides consumers that purchase a commercial feed that has been distributed in violation of chapter 580, F.S., the right to seek legal action to recover penalties. The law<sup>8</sup> specifies penalties to coincide with the various violations. The statutes state that a penalty may not be less than \$10 regardless of the monetary value of the violation.

The department states that in 1995, when the current law was amended, statutory language was inadvertently omitted that allowed the department to impose and recover monetary penalties for commercial feed found, when tested by the department's laboratories, to be deficient or excessive in nutrients. Additionally, pre-1995 statutory language, entitled the consumer to payment of penalties through any legal or administrative action that might be implemented, which enabled the state to order restitution on behalf of the consumer through administrative action. The pre-1995 statutes also provided for the penalties to be paid to the department when the identity of the consumer could not be ascertained.

## Effect of Proposed Changes

### *Agricultural Feed, Seed and Fertilizer Advisory Council*

The bill repeals the Fertilizer Technical Council, the Commercial Feed Technical Council, and the Seed Technical Council and creates the Agricultural Feed, Seed and Fertilizer Advisory Council. The new

---

<sup>6</sup> Section 580.041(1)(b), F.S., provides a chart listing the fee per ton of feed distributed.

<sup>7</sup> Rule 5E-3.003, F.A.C.

<sup>8</sup> Section 580.131, F.S.

council will consist of 15 members who represent the department, IFAS, the beef cattle, poultry, aquaculture, field crops, citrus, vegetable, and dairy production industries, as well as representatives of the fertilizer, seed, and commercial feed industries.

Each member shall be appointed by the Commissioner of Agriculture for a term of 4 years or until a successor is appointed. The members shall organize by electing a chair, a vice chair, and a secretary to serve a 2-year term. Council officers may not serve consecutive terms.

For all purposes, a majority of the members constitutes a quorum. The secretary of the council must keep a record of each meeting, noting the members present and the actions taken. The records of the meetings must be kept on file with the department and are subject to review by members of the council.

The council must meet at least twice a year, either at the call of the chair, by request of a majority of its members, at the request of the department, or at such time as an agricultural or environmental emergency arises. The council may receive reports of relevant enforcement activity conducted by the department, which may include the number of inspections, the number of administrative actions, the number of complaints received and investigated, and the dispositions of complaints. The council may also provide advice to the department on the conduct of actions, and make recommendations to the Commissioner of Agriculture for actions to be taken with respect to the regulation of feed, seed, and fertilizer.

#### *Commercial Feed Master Registration*

The bill amends s. 580.041, F.S., to change the tonnage reporting requirements. The tonnage of feed distributed in the state must be reported to the department on a quarterly basis, no later than 30 days following the end of each quarter.

The bill also allows the department to issue a warning letter; impose an administrative fine not to exceed \$1,000 per occurrence; revoke or suspend the master registration, laboratory certification, or quality assurance/quality control plan approval; or, impose a probationary period of up to 6 months for persons who violate the provisions of chapter 580, F.S.

#### *Commercial Feed Penalties Payable to Consumers*

The bill amends s. 580.131, F.S., to provide consumers who purchase commercial feed that has been distributed in violation of chapter 580, F.S., or any rules promulgated under chapter 580, F.S., the right to seek legal or administrative action to recover penalties. The bill also requires the registrant to reimburse the consumer within 60 days of notice of penalty from the department. Registrants that fail to meet the 60-day deadline are subject to a warning letter; the imposition of an administrative fine not to exceed \$1,000 per occurrence; revocation or suspension of the master registration, laboratory certification, or quality assurance/quality control plan approval; or, imposition of a probationary period of up to 6 months.

Lastly, the bill specifies that, when the identity of the consumer cannot be ascertained, the registrant must reimburse the department within 60 days of notice of penalty being served. The proceeds from penalty payments must be deposited into the General Inspection Trust Fund to be used for the sole purpose of funding the feed inspection program.

### **Soil and Water Conservation Districts**

#### Present Situation

Soil and water conservation districts are governmental subdivisions of the state that coordinate with federal, state, regional, and other local partners to develop and implement soil and water conservation practices on private lands. Districts are currently regulated under chapter 582, F.S.

Section 582.20, F.S., specifies that the powers and duties of the districts include:

- Conducting surveys, investigations, and research on soil erosion, floodwater and sediment damages, conservation issues, development and utilization of soil and water resources, disposal of water, preventive and control measures and works of improvement needed.
- Publishing the results of surveys, investigations and research and disseminating information regarding preventive and control measures and works of improvement.
- Disseminating information concerning such preventive and control measures and works of improvement.
- Avoiding duplication of research by the districts working in cooperation with the state or its agencies and the federal government or its agencies.
- Conducting demonstration projects regarding effective conservation methods.
- Implementing preventive and control measures for conservation, development and utilization of soil and water resources, and the disposal of water within the district, such as engineering operations, methods of cultivation, the growing of vegetation, changes in land use, and other measures on private lands or public-owned lands, with the cooperation of landowners or the public land management agency.
- Cooperating or entering into agreements with, and within the limits of appropriations made available to the districts, to furnish financial or other aid to any agency, governmental or otherwise, or any landowner or occupier of land within the district to assist in conservation efforts.
- Acquiring, either by purchase, exchange, lease, gift, grant, bequest, or otherwise, any property, real or personal, or rights or interests in such property, as well as maintaining, administering, improving, receiving income from, or disposing of any properties acquired.
- Making available to landowners and occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment to assist in such operations to attain conservation goals.
- Constructing, improving, operating and maintaining such structures as may be necessary or convenient for the performance of any of the operations authorized in chapter 582, F.S.
- Developing comprehensive plans for the conservation of soil and water resources.
- Taking over, by purchase, lease or otherwise, and administering any soil-conservation, erosion-control, erosion-prevention project, or any project for flood-prevention or for the conservation, development and utilization of soil and water resources, and the disposal of water.
- Managing, as agents of federal or state agencies, any soil-conservation, erosion-control, erosion-prevention project, or any project for flood-prevention or for the conservation, development and utilization of soil and water resources, and the disposal of water.
- Suing and being sued in the name of the district; having a seal, which may be judicially noticed; having perpetual succession unless terminated as provided in chapter 582, F.S., making and executing contracts or other instruments necessary to exercise the powers of the districts; upon a majority vote of the supervisors of the district, to execute promissory notes and other evidences of indebtedness; pledging, mortgaging and assigning the income of the district and its personal property as security for such promissory notes as may be obtained; making, amending and repealing rules and regulations to achieve the purposes and powers of the districts.

As a condition to extending any benefits under chapter 582, F.S., or the performance of work upon, any lands not owned or controlled by the state or its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners and occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands that will tend to prevent or control erosion and prevent floodwater and sediment damages on the land. Provisions relating to the acquisition, operation, or disposition of property by public bodies of the state apply only to districts organized under chapter 582, F.S. The

property and property rights of every kind and nature acquired by a district organized under chapter 582, F.S., are exempt from state, county, and other taxation.

Section 582.29, F.S., directs agencies of the state that have jurisdiction over the administration of any state-owned lands, and any county, or other governmental subdivision of the state that has jurisdiction over any county-owned or other publicly owned land, lying within the boundaries of any district to cooperate to the fullest extent with the supervisors of the district in effecting the programs and operations undertaken by the supervisors under the provisions of chapter 582, F.S. The supervisors of the districts are given free access to enter and perform work upon such publicly-owned lands. The provisions of land use regulations adopted must be in all respects observed by the agencies administering such publicly owned lands.

Currently, districts do not have the authority to work across district lines to assist landowners whose property falls outside a district boundary or in an area that doesn't have an active district.

Section 582.30, F.S., specifies that any time after 5 years from the organization of a district under chapter 582, F.S., any 10 percent of owners of land lying within the boundaries of such district may file a petition with the department asking that the operations of the district be terminated and the existence of the district discontinued. Upon petition, the department may conduct public meetings and hearings as necessary to assist in the consideration of termination of the district. Within 60 days after receiving the petition, the department must give due notice of holding a referendum, as well as supervising and issuing regulations to govern the referendum. The ballot must be clearly marked with the propositions "For terminating the existence of the district" and "Against terminating the existence of the district" and provide a square before each proposition with a direction to insert an "X" mark in the square before one or the other of the propositions as the voter so chooses. All owners of land lying within the boundaries of the district are eligible to vote in such referendum. If the referendum has been duly noticed and fairly conducted, no informalities relating to the conduct of the referendum can invalidate the referendum or its results. If two-thirds or more of the qualified voters in the referendum have voted for the discontinuance of the district, the department must certify to the supervisors of the district the result of the referendum and that the continued operation of the district is not administratively practicable or feasible.

Alternatively, upon review and recommendation of the Soil and Water Conservation Council regarding the continued viability of the district, the Commissioner of Agriculture may dissolve or discontinue a district if the commissioner certifies that the continued operation of the district is not administratively practicable or feasible. If a district has failed to comply with any of the audit and financial reporting requirements of chapter 189, F.S., the commissioner, after review and confirmation by the department's inspector general, may certify dissolution or discontinuance of the district without prior review and recommendation of the Soil and Water Conservation Council. Notice of the proposed certification of dissolution or discontinuance must be published once a week for 2 weeks in a newspaper of general circulation within the county or counties where the district is located. The notice must state the district's name, a general description of the territory included in the district and require that objections to the proposed dissolution or any claims against assets of the district must be filed with the department no later than 60 days following the date of last publication.

Section 582.31, F.S., directs a district to terminate the affairs of the district, upon receipt from the department of a certification that the department has found that the continued operation of the district is not administratively practicable and feasible. The supervisors of the district must dispose of all district property at a public auction and pay over the proceeds of the sale to the State Treasury, which is placed to the credit of the department to be used to liquidate any legal obligations of the district at the time of its termination. The supervisors must file an application with the Department of State for the discontinuance of the district, and must include with the application the certificate of the department setting forth the determination the continued operation of the district is not administratively practicable and feasible. The application must reiterate that the property has been disposed of and the proceeds paid over to the State Treasury. A full accounting of the properties and the proceeds of the sale must

be included in the application. The Department of State must then issue to the supervisors of the district a certificate of dissolution and record the certificate in the appropriate book of record.

Section 582.32, F.S., provides that, upon issuance of a certificate of dissolution, all land use regulations previously adopted and in force within the district are no longer in force or effect. All contracts previously entered into by the district remain in force and effect for the period provided in such contracts and the department shall be substituted for the district or supervisors as party to such contracts. The department is subject to all benefits and liabilities under such contracts and has the same right and liability to perform, to require performance, to modify or terminate such contracts by mutual consent or otherwise, as the supervisors of the district would have had. Such dissolution does not affect the lien of any judgment entered under the provisions of ch. 582, F.S., or the dependency of any action instituted under the provisions of ch. 582, F.S., and the department must succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

#### *Soil and Water Conservation Council*

Section 582.06, F.S., creates the Soil and Water Conservation Council within the department, which is composed of 23 members. Eleven of the members are persons who have been involved in the practice of soil or water conservation, or in the development or implementation of interim measures or best management practices related to soil or water conservation. These eleven members must also be engaged in agriculture or an occupation related to the agricultural industry for at least 5 years at the time of their appointment. The remaining twelve members must include one representative each from the Department of Environmental Protection, the five water management districts, the Institute of Food and Agricultural Sciences at the University of Florida, the United States Department of Agriculture Natural Resources Conservation Service, the Florida Association of Counties, and the Florida League of Cities and two representatives of environmental interests.

All members are appointed by the Commissioner of Agriculture from recommendations provided by the organization or interest represented. The term of appointment is for four years or until successors are duly qualified and appointed. Vacancies are filled for the remainder of the term in the manner of an initial appointment. The meetings, powers and duties, procedures, and recordkeeping of the council, as well as per diem and travel expenses of the council members, are governed by s. 570.0705, F.S., relating to advisory committees established within the department.

#### Effect of Proposed Changes

The bill amends ss. 582.20 and 582.29, F.S., to allow districts to work within their boundaries, territories within another district's boundaries subject to the other district's approval, or territories not contained within any district's boundaries in order to maximize the utilization of water conservation devices, systems, and techniques in an area that either falls outside a district boundary or that doesn't have an active district.

The bill amends s. 582.30, F.S., to provide for the dissolution or discontinuance of a district if:

- The Soil and Water Conservation Council, upon review and recommendation, determines the continued operation of the district is not administratively practicable and feasible under the provisions of chapter 582, F.S.
- The district fails to comply with any audit or financial reporting requirement of chapter 189, F.S., and the department's inspector general reviews and confirms in writing the district has failed to comply with any of the requirements.
- The department receives a resolution adopted by the supervisors of the district requesting the commissioner to issue a certificate determining that the continued operation of the district is not administratively practicable and feasible under the provisions of chapter 582, F.S.

If any of the requirements for a dissolution or discontinuation are satisfied, the department must publish notice of a proposed certificate determining that the continued operation of the district is not administratively practicable and feasible under the provisions of chapter 582, F.S. The notice procedures remain the same as current law. Upon expiration of the 60-day period after the date of last publication, the commissioner, upon review of any comments or objections received, may issue a certificate determining that the continued operation of the district is not administratively practicable and feasible under the provisions of chapter 582, F.S. If the commissioner issues such a certificate, the department must file the original certificate with the Department of State and must provide a copy of the certificate to the supervisors of the district at the district's principal office.

The bill amends s. 582.31, F.S., to provide for the proceeds of the sale of district property to be paid to the State Treasury and credited to the district, rather than the department; thus, making the legal obligations the responsibility of the district at the time of the district dissolution.

The bill amends s. 582.32, F.S., to provide that, upon issuance of a certificate of dissolution, the title to all property owned by the district is transferred to the local general-purpose government pursuant to s. 189.4045(2), F.S., which will also assume all indebtedness of the district. This is the manner by which the assets and liabilities of other special districts are handled upon dissolution.

#### *Soil and Water Conservation Council*

The bill amends s. 582.06, F.S., reducing the membership of the council from 23 members to 7 members, all of whom must have been involved in the practice of soil or water conservation, or in the development or implementation of interim measures or best management practices related to soil or water conservation. The members must also be engaged in agriculture or an occupation related to the agricultural industry for at least 5 years at the time of their appointment. All members are appointed by the Commissioner of Agriculture and serve 4-year terms or until their successors are duly qualified and appointed. Vacancies are filled for the remainder of the term in the manner of an initial appointment. The meetings, powers and duties, procedures, and recordkeeping of the council are governed by s. 570.0705, F.S., relating to advisory committees established within the department.

### **Animal Industry**

#### Present Situation

##### *Whole-herd and Calf Vaccination*

Section 585.155, F.S., specifies that all female calves born in the state used for dairy breeding purposes must be vaccinated with an approved *Brucella abortus* vaccine by state or federal regulatory officials or licensed, accredited veterinarians. When vaccinated, calves must be tattooed with the official shield tattoo "V", which is registered by the United States Department of Agriculture (USDA), in the right ear, preceded by the numeral of the quarter of the year and followed by the last numeral of the year. Additionally, each calf must be individually identified at the time of vaccination, if not already identified by tattoo or brand, by an official vaccination ear tag in the right ear. The tag must include the designated state prefix, followed by the letter "V," two additional letters, and four numerals. Registration tattoos or individual brand numbers may be substituted for the official ear tags. The identification must be accurately recorded on the official vaccination record. Duplicate records of these vaccinations must be supplied to the department and comprise the official record of vaccination.

Each owner of a herd of cattle in the state must enroll the herd in a program to determine whether the herd is infected with brucellosis. When reactors or suspects are revealed in a herd, the department and the owner must develop a plan to eliminate the infection in accordance with the Uniform Methods and Rules for Brucellosis Eradication and the rules of the state. The plan must include the required testing, removal of reactor animals, calfhood vaccination, and whole-herd vaccination to clear the herd of infection.

The department must establish low brucellosis incidence areas and brucellosis free areas that can be recognized by the USDA as having Class "Free," Class "A," or Class "B" status under the Uniform Methods and Rules for Brucellosis Eradication. The only vaccine that qualifies under chapter, 585, F.S., is an approved vaccine produced under license of the USDA.

### Effect of Proposed Changes

#### *Whole-herd and Calf Vaccination*

The bill repeals s. 585.155, F.S. Florida has been declared brucellosis-free since 2001 and no cases have been revealed since that time. Although calfhod vaccination continues on a voluntary basis, the vaccine is no longer provided at state expense.

### **Aquaculture**

#### Present Situation

##### *Aquaculture Certification*

Section 597.004(1), F.S., specifies the criteria that must be met in order to become certified to engage in aquaculture production in the state. The application for certificate of registration must include:

- Applicant's name/title;
- Company name;
- Complete mailing address;
- Legal property description of all aquaculture facilities;
- Actual physical street address for each aquaculture facility;
- Description of production facilities;
- Aquaculture products to be produced;
- One-hundred dollar annual registration fee; and
- Documentation that the rules adopted relating to chapter, 597, F.S., have been complied with in accordance with s. 597.004(2)(a), F.S.

##### *Aquaculture Interagency Coordinating Council*

Section 597.006, F.S., creates the Aquaculture Interagency Coordinating Council. The council was created in 1984 to facilitate and coordinate inter-agency communication regarding aquaculture activities between the department, the Department of Economic Opportunity, the Department of Environmental Protection (DEP), the Fish and Wildlife Conservation Commission (FWCC), the statewide consortium of universities under the Florida Institute of Oceanography, Florida Agricultural and Mechanical University (FAMU), the Institute of Food and Agricultural Sciences at the University of Florida (IFAS), and the Florida Sea Grant Program.

The council is composed of one member from each of the above-referenced organizations, to be designated by the head of the respective organization, to act as an aquaculture contact person. In the case of the IFAS, the Vice President for Agricultural Affairs serves as the representative for the council.

The council meets quarterly, with a chair and vice chair being elected by the membership to serve for 1 year. The chair may call for a council meeting as often as necessary to transact business. At least one meeting a year must be a joint meeting with the Aquaculture Review Council (ARC). The council may designate subcommittees as needed to assist in carrying out its responsibilities. A majority of the members constitutes a quorum and an action by a majority of the quorum is considered official. The department has primary responsibility for providing administrative and staff support for the council and must maintain a record of the proceedings of each meeting, which must include the name of the

members present and any action taken. The records of the meeting must be kept on file with the department and available for review by the council members.

The purpose of the council is to establish positive interagency cooperation to foster the development of the state's aquaculture industry. To achieve this purpose the council must:

- Serve as a forum for discussion and study regarding governmental regulations relating to aquaculture.
- Review and discuss aquaculture issues developed by the ARC.
- Formulate responses to industry issues, as presented by the ARC, which include solutions and policy alternatives to facilitate aquaculture development.
- Review the recommendations for short-term research projects submitted to the Commissioner of Agriculture by the ARC and forward any pertinent comments to the Commissioner of Agriculture.
- Review the results of the aquaculture research projects funded by the department.
- Establish and maintain effective and cooperative linkages between member agencies, the ARC, and the public and private institutional research, extension, and service programs, so that recommendations for improvement are responsive to the needs of aquaculture.
- Prepare an annual report to be submitted by December 1 each year to the Governor, the President of the Senate, the Speaker of the House of Representatives, the chairs of the legislative appropriations and agriculture committees, and the heads of each agency represented on the council. The report includes all actions and recommendations of the council, as well as the responsive actions taken by the agencies. The report also includes a list of all aquaculture activities undertaken by member agencies and the needs each activity is designed to address, the results, the funds expended on each activity, and the source of those funds.
- Develop guidelines for use by member agencies when reporting any aquaculture activities.

### Effect of Proposed Changes

#### *Aquaculture Certification*

The bill amends s. 597.004(1), F.S., to specify that the annual registration fee is waived for any elementary, middle, high school or vocational schools that participate in the aquaculture certification program. Currently, there are approximately 15 certified aquaculture programs in schools around the state. These programs help to educate students on potential career paths, proper handling of non-native species, as well as demonstrating hands-on practical educational opportunities. The department hopes that by waiving the certification fee, more schools will become involved in the aquaculture certification program.

#### *Aquaculture Interagency Coordinating Council*

The bill amends ss. 379.2523, 597.0021, 597.003 and 597.005, F.S., and repeals s. 597.006, F.S., to abolish the Aquaculture Interagency Coordinating Council.

### **License and Bond Law**

#### Present Situation

##### *Section 604.21, F.S.*

The Florida License and Bond Law (law) was enacted in 1941 to give market protection to producers of perishable agricultural commodities. The law is intended to facilitate the marketing of Florida agricultural products by encouraging a better understanding between buyers and sellers and by providing a marketplace that is relatively free of unfair trading practices and defaults.

Section 604.21, F.S., provides a process for complaints, investigations and hearing regarding the law. Current law provides that any person, partnership, corporation, or other business entity claiming to be damaged by a breach of the conditions of the bond or certificate of deposit assignment or agreement given by a dealer in agricultural products as previously provided may enter a complaint against the dealer and against the surety company, if any, to the department. The complaint must consist of a written statement of the facts constituting the complaint. The complaint must include all agricultural products defined in s. 604.15(1), F.S., as well as any additional charges necessary to effectuate the sale unless these additional charges are already included in the total delivered price. The complaint must be filed within 6 months from the date of sale in instances involving direct sales or from the date on which the agricultural product was received by the dealer in agricultural products, as agent, to be sold for the producer. No complaint may be filed pursuant to this section unless the transactions involved total at least \$500 and occurred in a single license year. Before a complaint can be processed, the complainant must provide the department with a \$50 filing fee. In the event the complainant is successful in proving the claim, the dealer in agricultural products must reimburse the complainant for the \$50 filing fee as part of the claim settlement.

To be considered timely filed, a complaint together with any required affidavits or notarizations must be received by the department within 6 months after the date of sale by electronic transmission, facsimile, regular mail, certified mail, or private delivery service. If the complaint is sent by a service other than electronic mail or facsimile, the mailing must be postmarked or dated on or before the 6-month deadline to be accepted as timely filed.

When multiple claims exist by a producer, a producer's agent or representative, or a dealer and the combined adjudicated amounts exceed the total amount of any bond and certificate of deposit, sales occurring 120 or more days after the oldest sale stated in any complaint filed by the same producer, producer's agent or representative, or dealer may not be considered for payment from the proceeds of the bond or certificate of deposit in the event that the surety company or financial institution is called on to make payment.

A person, partnership, corporation, or other business entity filing a complaint must submit to the department the following documents three completed complaint affidavits on a form provided by the department with an original signature of an owner, partner, general partner, or corporate officer and an original notarization on each affidavit. If the complaint is filed by electronic transmission or facsimile, the original affidavits and original notarizations must be filed with the department not later than the close of business of the tenth business day following the electronic transmission or facsimile filing. Copies of all documents to support the complaint must be attached to the complaint affidavit. Supporting documents may be copies of invoices, bills of lading, packing or shipping documents, demand letters, or any other documentation to support the claim. In cases in which there are multiple invoices being claimed, a summary list of all claimed invoices must accompany the complaint.

A dealer in agricultural products who is in compliance with ss. 604.15-604.34, F.S., may file a complaint with the department against another licensed dealer in agricultural products. However, payment from a bond or certificate of deposit to a dealer can occur only after all claims of producers or producers' agents or representatives have been paid in full except as provided pursuant to paragraph (c).

Filing a complaint with the department does not constitute an election of remedies when the same or similar complaint is filed in another venue. The surety company or financial institution is responsible for payment of properly established complaints filed against a dealer, notwithstanding the dealer's filing of a bankruptcy proceeding.

Upon the filing of such complaint in the manner herein provided, the department shall investigate the matters complained of; whereupon, if, in the opinion of the department, the facts contained in the complaint warrant such action, the department shall serve notice of the filing of complaint to the dealer against whom the complaint has been filed at the last address of record. Such notice must be accompanied by a true copy of the complaint. A copy of such notice and complaint must also be

served to the surety company, if any, that provided the bond for the dealer, which surety company becomes a party to the action. Such notice of the complaint must inform the dealer of a reasonable time within which to answer the complaint by advising the department in writing that the allegations in the complaint are admitted or denied or that the complaint has been satisfied. Such notice must also inform the dealer and the surety company or financial institution of a right to a hearing on the complaint, if requested.

If the dealer files an answer admitting the allegations of the complaint and the department determines through inquiry of the complainant that the dealer has failed to satisfy same within 21 days after receipt of the notice of the filing of a complaint by any party whose substantial interests are determined by the department, the department can thereupon order payment by the dealer of the amount found owed. In the event a party files a request that the complaint be held in abeyance pending a settlement agreement, the period of abeyance may not exceed 6 months and successive periods of abeyance may not be granted.

If the dealer files an answer and denies the allegations of the complaint and waives a hearing, the department may order a hearing or enter an order based on the facts and circumstances set forth in the complaint and the respondent's answer thereto. If the department determines the complaint has not been established or fails to meet the provisions of this section, the order must, among other things, dismiss the proceedings. If the department determines that the allegations of the complaint have been established, it can enter its findings of fact accordingly and thereupon enter its order adjudicating the amount of indebtedness due to be paid by the dealer to the complainant.

Any order entered by the department pursuant to this section shall become final and effective on the date filed with the department's agency clerk. Any party whose substantial interest is affected by a proceeding pursuant to this section must be granted a hearing upon request as provided by chapter 120, F.S. Such hearing must be conducted pursuant to chapter 120, F.S. The final order of the department, when issued pursuant to the recommended order of an administrative law judge, is final and effective on the date filed with the department's agency clerk. Any party to these proceedings adversely affected by the final order is entitled to seek review of the final order pursuant to s. 120.68, F.S., and the Florida Rules of Appellate Procedure. Should a complaint forwarded by the department to the Division of Administrative Hearings be settled prior to a hearing pursuant to chapter 120, F.S., the department must issue a notice closing the complaint file upon receipt of the administrative law judge's order closing the complaint file, and the matter before the department must be closed accordingly.

Any indebtedness set forth in a departmental order against a dealer must be paid by the dealer within 15 days after such order becomes final. Upon the failure by a dealer to comply with an order of the department directing payment, the department can, in instances involving bonds, call upon the surety company to pay over to the department out of the bond posted by the surety company for such dealer or, in instances involving certificates of deposit, call upon the financial institution issuing such certificate to pay over to the department out of the certificate under the conditions of the assignment or agreement, the amount called for in the order of the department, not exceeding the amount of the bond or the principal of the certificate of deposit. If the bond or the principal of the certificate of deposit is insufficient to pay in full the amount due each complainant as set forth in the order of the department, the department must distribute the proceeds pro rata among such complainants. The proceeds from a bond or the principal from a certificate of deposit must be paid directly to the department to be distributed by it to successful complainants, except the accrued interest on a certificate of deposit must be paid to the dealer. Such funds are considered trust funds in the hands of the department for the exclusive purpose of satisfying duly established complaints. Payments made to the department pursuant to this section are considered payments made upon demand and may not be considered voluntary payments.

Payments from a surety company or proceeds from a certificate of deposit must be paid first to the producer or the producer's agent or representative in the amount of the producer's claims in full if such

proceeds are sufficient for such purpose and, if not, then in pro rata shares to such producer or producer's agent or representative. If additional proceeds exist in the hands of the department after all claims of a producer and a producer's agent or representative have been paid in full, the balance of such proceeds must be paid to claimants who are licensed dealers in agricultural products, either in whole or in pro rata portion, as the aggregate of their claims may bear to the amount of such additional proceeds.

Nothing in this section may be construed as relieving a surety company from responsibility for payment on properly established complaints against dealers involved in a federal bankruptcy proceeding and against whom the department is prohibited from entering an order.

Upon the failure of a surety company to comply with a demand for payment of the proceeds on a bond for a dealer in agricultural products, a complainant who is entitled to such proceeds, in total or in part, may, within a reasonable time, file in the circuit court a petition or complaint setting forth the administrative proceeding before the department and ask for final order of the court directing the surety company to pay the bond proceeds to the department for distribution to the complainants. If in such suit the complainant is successful and the court affirms the demand of the department for payment, the complainant shall be awarded all court costs incurred therein and also a reasonable attorney's fee to be fixed and collected as part of the costs of the suit. In lieu of such suit, the department may enforce its final agency action in the manner provided in s. 120.69, F.S.

### *Packers and Stockyards Act*

The Packers and Stockyards Act (act) was passed in 1921 in response to deceptive practices by the industry during World War I. The purpose of the act was to regulate interstate and foreign commerce in livestock, live-stock produce, dairy products, poultry, poultry products, and eggs. The act prohibited packers from engaging in unfair and deceptive practices, giving undue preferences to persons or localities, apportioning supply among packers in restraint of commerce, manipulating prices, creating a monopoly or conspiring to aid in unlawful acts. The act also made stockyards quasi-public utilities and required yard officers, agents, and employees to register with the government. Stockyards were forbidden from dealing in the livestock they handled and were required to maintain accurate weights and measures and pay shippers promptly.

The act has been amended several times throughout the years. In 1976, the act was amended to increase financial protection to livestock producers and to expand the United States Department of Agriculture's (USDA's) jurisdiction. The amendment:

- Required meatpackers with annual livestock purchases over \$500,000 to be bonded;
- Provided trust protection for producers in the event of nonpayment for livestock by a meatpacker;
- Expanded USDA's jurisdiction over wholesale brokers, dealers, and distributors marketing meat in commerce; and,
- Authorized the USDA to assess civil penalties of not more than \$10,000 per violation.

Currently, in many cases, the USDA acts as the trustee to oversee the distribution of funds when a claim occurs. According to the department, the USDA has been slow to disburse funds and various industry groups have asked the Commissioner of Agriculture to act as trustee. Currently, approximately seven other states employ the method of assigning the Commissioner of Agriculture as the trustee.

### Effect of Proposed Changes

The bill amends s. 604.21, F.S., to provide that, notwithstanding any law to the contrary, the Commissioner of Agriculture or the commissioner's authorized designee may act as trustee on any bond or other form of security posted with the United States Department of Agriculture (USDA) in compliance with the federal Packers and Stockyards Act. The commissioner may enter into

agreements with the USDA as necessary to effectuate the purposes of the Packers and Stockyards Act.

## **Miscellaneous**

### Present Situation

#### *Florida Agricultural Exposition*

In 1969, the department received legislative authority to construct and equip, in conjunction with the Department of Corrections, an agricultural exposition center in Palm Beach County to be known as the Florida Agricultural Exposition. The exposition is administered by the department for the purposes of:

- Demonstrating and selling Florida agricultural products;
- Attracting and informing buyers;
- Conducting agricultural short courses and conferences;
- Organizing tours to aid in the marketing of Florida agricultural products to domestic and foreign markets; and
- Training prisoners of the correctional institutions of the state in agricultural labor and management.

The department and the Department of Corrections have statutory authority to receive donations of funds from growers and dealers of agricultural products, the various groups and associations representing agricultural products and agricultural business products, the federal government and other sources. The moneys collected are deposited into the state treasury in a separate trust fund. The department is further authorized to expend up to \$25,000 of its own funds, if available. Lack of interest, as well as funding, makes it no longer feasible to continue the operation of the exposition.

#### *Marketing Orders*

Marketing orders are instrumentalities issued by the department and designed to regulate the distribution and handling of agricultural products in intrastate commerce. Marketing orders become effective when consented to by a majority of producers or handlers of such commodities in the state.<sup>9</sup> To establish a marketing order, at least 10 percent of the affected producers must petition the department to give notice of a public hearing regarding a proposed marketing order.<sup>10</sup> Once the notice has been filed and the hearing has been conducted, the department may issue the marketing order if it determines the order will accomplish certain objectives prescribed by statute.<sup>11</sup> Prior to a marketing order being issued, the petitioners must deposit such monies with the department to defray the cost of implementing the marketing order. Thereafter, persons directly affected by the marketing order shall pay such amounts as the department deems necessary to cover the administration and enforcement of the marketing order.<sup>12</sup> Section 573.118(4) directs the department to arrange on an annual basis for an audit of the books and accounts of the marketing order by a certified public accountant (CPA). The CPA must notify the department and all parties covered by the marketing order of the results no later than 30 days following the audit.

---

<sup>9</sup> Section 573.104, F.S.

<sup>10</sup> Section 573.105, F.S.

<sup>11</sup> Section 573.108, F.S.

<sup>12</sup> Section 573.118, F.S.

## Effect of Proposed Changes

### *Florida Agricultural Exposition*

The bill repeals section 570.071, F.S., which creates and administers the Florida Agricultural Exposition.

### *Marketing Orders*

The bill amends s. 573.118, F.S., to require the department to maintain records of collections and expenditures for each marketing order separately within the state's accounting system. Rather than an annual audit, the bill directs that a review be conducted when requested by an advisory council associated with the particular marketing order.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### 1. Revenues:

By amending 580.041, F.S., the department may receive increased revenues as a result of the changes in reporting requirements for distributors of commercial feed. Although the fiscal impact is indeterminate, revenues collected for FY 2010-11 were \$542,580.

By amending s. 590.02, F.S., the department may receive private funds to administer tree-planting programs, but the amount cannot be determined at this time.

#### General Inspection Trust Fund

	<b>FY 2012-13</b>	<b>FY 2013-14</b>
Milkfat Tester Permits	(\$6,562)	\$0
Commercial Feed Penalties	\$3,600	\$0
Aquaculture Certification	<u>(\$1,500)</u>	\$0
Subtotal	(\$4,462)	\$0

#### 2. Expenditures:

#### Division of Licensing Trust Fund

	<b>FY 2012-13</b>	<b>FY 2013-14</b>
Private Investigation, Recovery and Security Advisory Council	(\$11,300)	\$0

#### General Inspection Trust Fund

	<b>FY 2012-13</b>	<b>FY 2013-14</b>
Milkfat Sampling Costs	(\$400)	\$0

Division of Licensing Trust Fund Net Positive Impact \$11,300

General Inspection Trust Fund Net Negative Impact (\$4,062)

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

By amending s. 388.323, F.S., local governments will only be required to offer equipment to other counties or districts engaged in arthropod control. Eliminating the requirement to notify other governmental units and private nonprofit agencies of the sale of mosquito control equipment may reduce advertising costs.

	<b>FY 2012-13</b>	<b>FY 2013-14</b>
Local School Districts with Aquaculture Programs (15 programs x \$100)	(\$1,500)	\$0

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

By amending s. 580.131, F.S., persons who have purchased commercial feed that has been distributed in violation of chapter 580, F.S., may seek administrative action, as well as legal action, to recover penalties.

By amending s. 604.21, F.S., livestock producers will receive claim payments in a timelier manner.

**D. FISCAL COMMENTS:**

None